DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 23 1997

Federal Communications Commission
Office of Secretary

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Amendment of the Installment Payment Financing Terms for C and F Block Licensees	)	WT Docket No. 97-82
	)	
	)	

To: Acting Chief, Wireless Telecommunications Bureau

COMMENTS OF INDUS, INC.

Kailas J. Rao, Ph.D.
Richard E. Kinder, Jr.
Michael J. Flanigan
INDUS, INC.
777 East Wisconsin Ave.
Suite 1900
Milwaukee, WI 53202
(414) 283-0080

Philip L. Verveer
Jennifer A. Donaldson
David M. Don
WILLKIE FARR & GALLAGHER
1155 21st Street, N.W., Suite 600
Three Lafayette Centre
Washington, D.C. 20036-3384
(202) 328-8000

Its Attorneys

June 23, 1997

TABLE OF CONTENTS

SUMMARY

The Commission should amend the terms of the installment payment obligations for C Block licensees. Specifically, Indus proposes that the Commission, at minimum, revise its rules and policies in accordance with the following:

- defer all payments for six years with no accrual of interest during this time;
- over the last four years of the license term, require C Block licensees to make payments to the Commission in equal annual installments to repay both principal and interest;
- reduce the applicable interest rate from 7.0% to 6.5%;
- ease and/or remove restrictions on the transfer of licenses to non-designated entities along with restrictions on control group requirements; and
- lift limitations on foreign equity consistent with the terms and intent of the World Trade Organization Basic Telecommunications Agreement.

These modifications are consistent with the Commission's obligations to review its policies when they fail to meet the objectives for which they were created. By restructuring, Congress' and the Commission's intent to foster the development of a fully competitive PCS market will be realized in furtherance of the public interest.

RECEIVED

JUN 2 3 1997

Federal Communications Commission
Office of Secretary

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Amendment of the Installment Payment Financing Terms for C and F Block Licensees	)))	WT Docket No. 97-82

To: Acting Chief, Wireless Telecommunications Bureau

COMMENTS OF INDUS, INC.

I. INTRODUCTION

The Commission has stated its intention in this proceeding to adopt a restructuring plan that would be most appropriate to alleviate the financial difficulties currently facing C Block licensees.[1] Indus, Inc., licensee of the C Block PCS BTA covering Milwaukee, Wisconsin, submits that the Commission should seek to realize two overriding principles when considering the plans before it: (1) accomplish substantial alterations to the existing installment payment plans; and (2) maintain a long term perspective that enhances national communications policy.

As to the former, the Commission should take all necessary efforts to enable C Block licensees to find firm financial

---

1 Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues, Public Notice in WT Docket No. 97-82 (released June 2, 1997) at 2.

footing. Any modification to the existing installment payment structures must therefore be significant and ensure that this issue will not need to be revisited in the future. Simply stated, the Commission's revision of the installment payment plans must go far enough to achieve success.

The Commission should also establish a repayment plan that furthers national telecommunications policy while also recognizing and supporting the national budget improvements realized through spectrum auctions. First among all considerations must be fostering the growth of a robustly competitive nationwide wireless telecommunications infrastructure. Restructuring C Block repayment plans is critical to realizing this goal in all geographic regions. In fact, the Commission has said as much when it noted that the measures it was adopting for small businesses, including the installment payment plans, "will also increase the likelihood that designated entities who win licenses in the auctions become strong competitors in the provision of broadband PCS service."[2] Now, however, the installment payment approach must be modified if the goal of national competition is to be pursued as far as spectrum availability will permit. The existing formula, which requires repayment to begin immediately, has not been able to alleviate the inherent problem that the Commission sought to

---

2 Implementation of Section 309(j) of the Communications Act - Competitive Bidding Fifth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 5532 at ¶ 96 (1994)("Fifth Report and Order").

address with the creation of installment payments -- improving small businesses' access to capital.

II. THE COMMISSION SHOULD REVISE ITS INSTALLMENT PAYMENT PLAN TO SUBSTANTIALLY ASSIST C BLOCK LICENSEES

Indus submits this proposal to modify the repayment schedule for C Block licensees consistent with the parameters outlined above. Specifically, Indus proposes that the Commission, at minimum, adopt the following revisions:[3]

- defer all payments for six years with no accrual of interest during this time;
- over the last four years of the license term, permit C Block licensees to make payments to the Commission in equal annual installments to repay both principal and interest;[4]
- reduce the applicable interest rate from 7.0% to 6.5%;[5]
- ease and/or remove restrictions on the transfer of licenses to non-designated entities along with restrictions on control group requirements; and
- lift limitations on foreign equity consistent with the terms and intent of the World Trade Organization ("WTO") Basic Telecommunications Agreement.

---

3 Indus has also considered the possibility that the Commission could adopt a repayment schedule where interest accumulates and is added to the principal in the seventh year. Attachment, Scenario B.

4 See Attachment, Scenario A.

5 See Comments of Indus, Inc. and Chase Telecommunications, Inc. in response to the Wireless Telecommunications Bureau's Public Notice, In the Matter of 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes, DA 97-1152 (filed June 23, 1997).

Indus' recommendations for restructuring installment payment terms and other Commission rules will not only alleviate immediate capital shortfall concerns, but will also provide long term investment solutions. By delaying all payments for the first six years, entrepreneurs will be free to devote all capital resources to construction of network facilities and investment in operations rather than immediately satisfying spectrum debt obligations. This proposal assures that C Block licensees can focus their efforts on what they were licensed to do, offer PCS service. By the sixth year of operation all carriers will have satisfied the Commission's build-out requirements,[6] and, we believe, many will be providing full coverage in their service areas. Once this is accomplished, it is reasonable to expect carriers to pay the many millions of billions of dollars committed at auction. The merit of this proposal is that it meets the Commission's primary communications priorities, while also realizing the auction-established fees for the use of publicly owned spectrum.

In addition to altering the repayment schedule for debt obligations owed to it, the Commission should modify its restrictions on transfers and investments in C Block licensees. Each of these limitations reduces financial opportunities. Domestically, restrictions on the size of the control group and the unjust enrichment provisions have deflected would-be

---

6 47 C.F.R. § 24.203(a) (A licensee must serve at least one-third of the population in its service area within five years of being licensed.)

investors in C Block licenses to other opportunities. Similarly, the limitations on foreign ownership have reduced C Block access to capital.

Many of these restrictions were implemented by the Commission under its discretionary authority to promote small business participation in the provision of PCS services. Specifically, control group requirements,[7] the unjust enrichment provisions and the limitations on transfer of control are not mandated by Congress, but rather are creations of the Commission.[8] In theory, these restrictions prevent ineligible firms from controlling C Block spectrum. In practice, however, these restrictions are obstructing the ability of C Block licensees to obtain adequate financing, construct their networks, and commence service.

There is one additional point to consider: it is necessary to review the limitations on foreign ownership and to implement provisions consistent with the WTO Basic Telecommunications Agreement. The Commission has already initiated a proceeding to implement the terms of the WTO agreement.[9] Indus will

---

7 47 C.F.R. § 24.709 (establishing the twenty five percent control group minimum equity requirements and the 50.1 percent control group minimum equity requirements).

8 47 C.F.R. § 24.712(b)(unjust enrichment for bidding credits); 47 C.F.R. § 24.711(c)(unjust enrichment for installment payments); 47 C.F.R. § 24.839(d)(transfer restrictions).

9 Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Order and Notice of Proposed Rulemaking in IB Docket No. 97-142, FCC No. 97-195 (released June 4, 1997).

participate in this proceeding in support of the removal of foreign ownership restrictions as warranted by the WTO agreement.

In 1994 Congress and the Commission determined to enhance small business participation in the provision of wireless telecommunications services. It is well within the Commission's authority to implement changes necessary to meet that goal especially when such changes redound to the benefit of the consumer.

III. MODIFICATION OF THE EXISTING INSTALLMENT PAYMENT PLANS WILL FURTHER THE PUBLIC INTEREST.

By deferring payments for six years and lifting the investment restrictions, Indus believes that the Commission would be satisfying its most fundamental obligation -- to further the public interest. As a matter of process, it is in the public interest for the Commission to modify its rules when they are no longer achieving their stated purpose. As a matter of substance, it is in the public interest to enable additional competition provided by current C Block licensees.

In 1993 Congress mandated that the Commission adopt competitive bidding procedures which "ensure that small businesses . . . are given the opportunity to participate in the provision of spectrum-based services."[10] Undeniably, Congress did not simply intend for the Commission to adopt specialized competitive bidding procedures but then ignore the needs of small business licensees upon the completion of the C Block auctions.

---

[10] 47 U.S.C. § 309(j)(4)(D).

In fact, the Commission has stated that its obligations are not only to ensure that small businesses are able to participate effectively in the auctioning of PCS licenses, but also to give small businesses additional opportunities to provide PCS services to the public.[11]

The Commission recognized early on that one of the largest impediments small businesses face in providing PCS services is the substantial amount of capital wireless carriers need to initiate operations.[12] Therefore, installment payment plans were adopted as a means of alleviating the up front capital burdens of smaller carriers. More importantly, the Commission understood that access to capital in the traditional markets would be the primary impediment facing small businesses,[13] and that installment payments would "assist small entities who are likely to have difficulty obtaining adequate private financing."[14] Even before the current financial crunch facing C Block licensees, the

---

11 Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2348 at ¶ 229 (1994) ("[W]e are adopting general procedures that are designed to ensure that small businesses . . . are given the opportunity to participate in both the competitive bidding process and in the provision of spectrum-based services."(emphasis added))("Second Report and Order").

12 Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order in PP Docket No. 93-253, 10 FCC Rcd 403 at ¶ 103 (1994).

13 Fifth Report and Order at ¶ 10.

14 Second Report and Order at ¶ 233; see also Fifth Report and Order at ¶ 10.

Commission noted "the critical need [of small businesses] to attract capital, which requires flexibility."[15]

Indus supports the Commission's continued use of installment payments to achieve important national policy goals, but with modifications. As the Commission is well aware, the current installment payment plans are not meeting the goals that they were designed to achieve.[16] C Block carriers have been unable to obtain much of the financing which they reasonably believed would be available from domestic markets when the auctions concluded over a year ago. In light of these dramatically changed circumstances, the Commission not only has the discretion, but perhaps the obligation to restructure the repayment schedules of all C Block carriers.

A. The Commission Has An Obligation To The Public To Revisit Its Installment Payment Policies As A Result Of The Changed C Block Financing Opportunities.

The Commission's authority to modify its policies when factual or legal circumstances warrant revision cannot be disputed. The dramatic reduction of financing opportunities that C Block carriers currently face appears to trigger an affirmative Commission duty to revise its existing installment payment

---

15 Fifth Report and Order at ¶ 129.

16 The Commission effectively has taken preliminary steps to modify the installment payment program. Installment Payments for PCS Licenses, Order, DA 97-649 (released March 31, 1997); see also "Pocket Seeks Chapter 11 Protection," Washington Telecom News, Apr. 7, 1997 (Pocket Communications Inc. was the second highest bidder in the C Block auctions and was forced to seek Chapter 11 bankruptcy protection when it defaulted on a payment to one of its creditors.)

plans.[17] As the D.C. Circuit has noted "[t]he Commission's necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise . . . implies a correlative duty to evaluate its policies over time to ascertain whether they work-that is, whether they actually produce the benefits the Commission originally predicted they would."[18]

It is incontrovertible that the existing installment payment policy is suboptimal in practice. For a variety of reasons, C Block carriers are experiencing difficulty in satisfying their debt obligations with the Commission, and access to capital from financial markets is more difficult now than when the Commission first adopted its small business rules. Modification of the installment payment obligations, consistent with the terms described above, is a critical step toward achieving the true goal of the C Block auctions -- the provision of service by small businesses.

B. Revision Of The Installment Payment Plans Will Benefit Consumers And Increase Competition In The CMRS Marketplace.

In their current form, the installment payment formulas no longer appear to assist small businesses, and negatively affect all consumers by reducing the number of licensed carriers who are

---

17 Bechtel v. F.C.C., 957 F.2d 873, 881 (D.C. Cir. 1992) ("[C]hanges in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy . . .")

18 Id.; see also Geller v. F.C.C., 610 F.2d 973, 979 (D.C. Cir. 1979) ("[T]he agency cannot sidestep a reexamination of particular regulations when abnormal circumstances make that course imperative.")

providing service in a given market. Throughout the PCS licensing process, the Commission has reiterated its overriding policy objectives to award PCS licenses to carriers who value them most as expeditiously as possible.[19] Underlying this policy is the belief that rapid issuance of new PCS licenses necessarily enhances the options and prices available to consumers.

The C Block represents an important opportunity to increase competition in CMRS services. The C Block auction was designed intentionally to reserve spectrum for smaller carriers, many of which are new entrants into the CMRS market. The addition of C Block carriers adds competition by increasing the number of carriers.[20] C Block licensees, once in operation, will play an important role in achieving the Commission's policies of "promoting economic opportunity and competition, [] avoiding excessive concentration of licenses, and [] ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants."[21]

Without immediate restructuring of the installment payment obligations, the Commission will perpetuate a vicious cycle that will inevitably hinder marketplace competition. In an effort to

---

19 See e.g., Second Report and Order at ¶¶ 3-7.

20 Congress also acknowledged the public interest benefits of "avoiding excessive concentration of licenses and [] disseminating licenses among a wide variety of applicants, including small businesses. . . ." H.R. Rep. No. 111, 103d Cong., 1st Sess. 254 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 581.

21 Fifth Report and Order at ¶ 96.

conserve funds, many C Block carriers have already scaled down or delayed their market entry plans. In these circumstances, lack of action by the Commission to restructure C Block obligations will not only affect the timing of entry into the marketplace by C Block licensees, but will also hinder long term competition.

The Commission must also consider the consequences if it fails to grant relief in a manner which significantly assists C Block licensees. Assuming, *arguendo*, that the Commission fails to restructure the installment payment plans and that many C Block carriers fail to satisfy their debt obligations, the status of the licenses remain in question. While the Commission may seek to rescind or revoke a defaulting carrier's license, its authority to do so remains unsettled in situations where the licensee declares bankruptcy.[22] In addition, the Commission must consider the inevitable delay that will result both from the legal challenges surrounding rescinding or revoking a carrier's license and the requirement to conduct another auction of the reclaimed spectrum.

The Commission is facing the inevitable, and difficult, task of balancing its responsibilities as both regulator and creditor of the C Block licensees. In weighing its two priorities,

---

22 A recent Office of Management and Budget legislative proposal to allow the FCC to seize the license of a company filing for bankruptcy protection was not adopted by either of the Commerce Committees. <u>See</u> Chairman Reed Hundt, Address to the Citizens for a Sound Economy (June 18, 1997)("Some [policy makers] want us to let license[s] be tied up in Chapter 11 proceedings for years, thereby frustrating their commercial use.") The matter clearly remains unresolved.

however, the Commission must not lose sight of the fact that its primary charge lies in fostering the growth and development of a "Nation-wide . . . radio communication service with adequate facilities at reasonable charges."[23] Recently Chairman Hundt emphasized this when he stated that "auctions are not -- and this is absolutely true -- about the money."[24] Viewed in this light, the Commission must exercise its authority to further the goals of a national communications policy, and should therefore not hesitate to restructure the installment payment obligations of small business licensees.

---

23 47 U.S.C. § 151.

24 Chairman Reed Hundt, Address at the FCBA Monthly Luncheon (Apr. 30, 1997)(emphasis in original).

IV. CONCLUSION

For these reasons, the Commission should modify the installment payment plans of all C Block licensees.

Respectfully Submitted,

INDUS, INC.

Philip L. Verveer
Jennifer A. Donaldson
David M. Don*
WILLKIE FARR & GALLAGHER
1155 21st Street, N.W., Suite 600
Three Lafayette Centre
Washington, D.C. 20036-3384
(202) 328-8000

Its Attorneys

June 23, 1997

*Admitted in Florida only

INDUS, INC.

Proposal to Revise FCC License Payments

Scenario A:
No payments for 6 years
Loan is amortized over Years 7 through 10

	$ Million									
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**
Principal at Start of Year	$54.0	$54.0	$54.0	$54.0	$54.0	$54.0	$54.0	$41.7	$28.7	$14.8
Loan Payment	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$15.8	$15.8	$15.8	$15.8
Principal Reduction	0.0	0.0	0.0	0.0	0.0	0.0	12.3	13.0	13.9	14.8
Interest @ 6.5%	0.0	0.0	0.0	0.0	0.0	0.0	3.5	2.7	1.9	1.0
Principal at End of Year	$54.0	$54.0	$54.0	$54.0	$54.0	$54.0	$41.7	$28.7	$14.8	$0.0

Total Cash Payments	$63,050,992
NPV (Net Present Value) @ 15.0%	$19,455,738
NPV Cost per POP (1,.751,525 POPs)	$11.11

Scenario B:
No payments for 6 years
Interest accumulates and is added to Principal at start of Year 7

	$ Million									
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**
Principal at Start of Year	$54.0	$54.0	$54.0	$54.0	$54.0	$54.0	$75.1	$58.0	$39.9	$20.6
Loan Payment	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$21.9	$21.9	$21.9	$21.9
Principal Reduction	0.0	0.0	0.0	0.0	0.0	0.0	17.00	18.1	19.3	20.6
Cumulative Interest @ 6.5%	3.5	7.0	10.5	14.0	17.6	21.1	4.9	3.8	2.6	1.3
Principal at End of Year	$54.0	$54.0	$54.0	$54.0	$54.0	$54.0	$58.0	$39.9	$20.6	$0.0

Total Cash Payments	$87,640,879
NPV (Net Present Value) @ 15.0%	$27,043,476
NPV Cost per POP (1,751,525 POPs)	$15.44

Prepared by: Michael J. Flanigan
Vice President-Telecommunications

Attachment